



Date: January 6, 2009
To: City Manager for Council Action
From: John C. Roukema, Director of Electric Utility
Subject: Approval of Pole Contact Agreement with Comcast of California II, LLC

EXECUTIVE SUMMARY:

On August 13, 1996, the City of Santa Clara entered into a Franchise Agreement and a Pole Contact Agreement with TCI Cablevision of Georgia due to expire in September, 2006. In 2002, TCI Cablevision was acquired by AT&T Comcast Corporation and on July 9, 2002, the City and AT&T Comcast Corporation (Comcast of California/Florida/Oregon, Inc., or "Comcast") signed a "Change of Control Agreement" under which the terms and conditions of both the franchise and pole contact agreement were assigned to Comcast.

Silicon Valley Power (SVP), the City's electric utility, has a practice of allowing only franchised utilities to attach equipment to its facilities. This policy and practice exists to avoid jeopardizing the public utility easements SVP has in place to allow it to operate its facilities. In light of pending State legislation, in 2006 Comcast notified the City that it would not be renewing its Franchise Agreement. SVP subsequently met with Comcast representatives to discuss renewal of its Pole Contact Agreement. On December 5, 2006, Council approved an extension of the Pole Contact Agreement to December 31, 2007.

Since January 1, 2008, Comcast has been operating under a state franchise. SVP and City Attorney's staff met with Comcast over the last year and recommend that City Council approve a new Pole Contact Agreement, retroactive to December 31, 2007, and effective through January 1, 2018. A copy of the Pole Contact Agreement is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Entering into a Pole Contact Agreement with Comcast will allow the Pole Contact Agreement to remain in place and continue to protect the City's property under the same terms and conditions for ten years. The Agreement will not require additional investment in SVP infrastructure, but will require operational and administrative attention. These requirements will be met by existing personnel and contracted services.

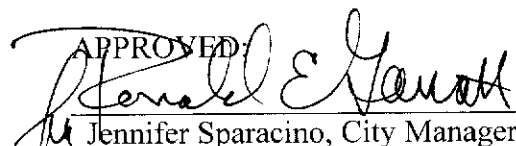
ECONOMIC/FISCAL IMPACT:

The Pole Contract Agreement with Comcast contributes about \$120,000 a year to the Cost Reduction Fund. No additional allocation of funds is required to execute the Comcast Pole Contact Agreement.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, a Pole Contact Agreement with Comcast of California II, LLC, for a period of ten years, retroactive to December 31, 2007, and extending to January 1, 2018.


John C. Roukema, Director of Electric Utility

APPROVED: 
Jennifer Sparacino, City Manager

1) Documents Related to this Report: Comcast of California II, LLC Pole Contact Agreement

**POLE CONTACT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
COMCAST**

This Pole Contact Agreement ("Agreement") is made and entered into on this ____ day of _____, 200__ ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power ("City") and Comcast of California II, LLC, a Delaware limited liability corporation ("Company") with an office at 1900 S. 10th Street, San Jose, California, 95112. City and Company may be referred to herein individually as a "Party", collectively as the "Parties" or "City" or "Company" as defined above.

RECITALS

- A. The City, as Silicon Valley Power ("SVP") owns, operates, and maintains poles, anchors, and other related equipment and land rights under the poles ("Overhead Facilities") designed primarily to facilitate the transmission and distribution of electric utility and fiber optic services to its electric customers;
- B. City has the ability to control the conditions under which third parties are allowed to contact its Overhead Facilities;
- C. City has determined that its electric utility ratepayers are not required to subsidize third parties, including individuals, business entities or their owners or their stockholders by entering into agreements regarding the use of its Overhead Facilities in a manner which may jeopardize the reliability of the SVP's electric transmission and distribution system. City will charge nondiscriminatory, market based fees for contacting its Overhead Facilities;
- D. City has determined that SVP will be reimbursed for all expenses incurred for establishing and maintaining this Agreement;
- E. Company desires to attach its wire, cable, fiber, amplifiers, switching, processing and transmission and distribution components of its cable and broadband communications system ("Communications Equipment") to the SVP's Overhead Facilities;
- F. Because it is impractical to execute a separate agreement in each instance which Company desires to contact the Overhead Facilities, it is the intent of the Parties that this Agreement shall be the all inclusive master agreement regarding such contacts for the duration of this Agreement.

AGREEMENT PROVISIONS

In consideration of the above referenced recitals and the following mutual covenants, agreements, and obligations of the Parties, Company and City agree as follows:

1. SCOPE OF ALLOWED USE OF CITY POLES

Company shall place its Communications Equipment on the City's poles and shall perform the work required to install its Communications Equipment promptly and in such manner as not to interfere with the services of the City's preexisting third party contacts. Use of any Overhead Facilities under this Agreement shall be confined to Communications Equipment, for which the City has specifically given Company written permission to install in accordance with this Agreement.

2. APPLICATION TO PLACE COMMUNICATIONS EQUIPMENT

Whenever Company desires to place Communications Equipment on any Overhead Facilities, Company shall make a written Request to the City for permission to attach to specific poles. This written Request shall include, but not be limited to, the route, specific poles and anchors to be contacted, equipment to be attached, height of contact, necessary work required by the City or others to make Overhead Facilities ready for contacts, and guying and wind loading calculations. Exceptions to this requirement are stated in Section 8.

3. COORDINATION WITH THIRD PARTIES

The City shall be responsible for identifying and notifying all third party users of any Overhead Facilities of any proposed new contacts or modifications of existing contacts. Company shall coordinate directly with third-party users any work that may be required by the third party users to accommodate Company's proposed work. Any costs associated with such modification of third party user's equipment are the responsibility of Company.

4. NEW OVERHEAD FACILITIES

Company agrees not to erect any pole of its own where City will provide Overhead Facilities adequate to accommodate Communications Equipment. If Company needs overhead Communications Equipment in location(s) where the City does not have Overhead Facilities, Company shall notify City of its need for such overhead facilities and shall make a written Request under this Agreement for permission to place Communications Equipment on the new Overhead Facilities. City, at its sole discretion and at the expense of Company, will install Overhead Facilities in such location.

5. APPROVAL TO PLACE COMMUNICATIONS EQUIPMENT

- 5.1. After a written Request has been submitted by Company and has been reviewed and approved by the City, permission to place the Communications Equipment described in the Request on the Overhead Facilities identified in the Request shall be granted by the City in writing, as expeditiously as feasible, but within sixty (60) days after the receipt of a completed Request. Any Request to overlash existing Communications Equipment shall be submitted in accordance with Section 2. City will approve or deny all completed overlash Requests within forty-five (45) days.
- 5.2. If, in the judgment of the City, the accommodation of any of Company's Communications Equipment necessitates either the rearrangement of City equipment located on a pole or anchor or the replacement of a pole or anchor, the City will notify Company of the necessary changes and the estimated cost of the changes required. At City's option, Company may perform the requested rearrangement on behalf of the City to City's specifications. If Company maintains its desire to use said Overhead Facilities and notifies City within fifteen (15) days, City will make such rearrangement or replacement at the sole expense of Company as promptly as feasible and, under normal circumstances, within thirty (30) days of Company's confirmation of the changes and the related costs. Company shall reimburse City for the total cost incurred in such rearrangement or replacement. For purposes of this Agreement, the term "Total Cost" shall mean all direct employee wage and benefit costs, cost of materials, cost of equipment used per the Schedule of Electric Department Vehicle Fees, as modified from time to time, and contractor payments. City will notify Company of any extraordinary cost before such costs are incurred. City shall not be responsible to Company for any loss sustained by Company by reason of the failure of any such third party City or user to make such rearrangements or transfers.
- 5.3. After completion of any work required by the City to make the Overhead Facilities ready for placement of the Communications Equipment and after receiving written approval to proceed from City, Company shall have the right to install, maintain and use Communications Equipment described in its Request, subject to any reasonable engineering and technical requirements set forth in the City's written approval. Before commencing any such installation, Company shall notify City of the time when it proposes to do said work at least five (5) business days in advance, or as soon as reasonably possible, so that City may arrange to have its representative present when such work is performed. Company shall also complete such installation within such reasonable time limit, not to exceed 90 days, subject to weather delays, or as may be specified in each application and written approval. If the installation is not substantially completed in the specified time limit, then upon notice by City, the Request and approval shall be considered withdrawn and a new Request must be submitted for approval. City shall not charge for inspections which take place pursuant to this Section 5.3, and in no event shall City charge for duplicative inspections in any case.

- 5.4 Nothing in this Agreement shall be construed to obligate City to grant Company permission to use any part of the Overhead Facilities, provided that such use shall not be denied or delayed in a discriminatory manner. If permission to use a part of the Overhead Facilities is refused, Company may make other arrangements for the installation of Communications Equipment. Company agrees to conform, install and maintain its Communications Equipment to the requirements of General Order No. 95 of the Public Utilities Commission of the State of California as amended.
- 5.5 Inactive Equipment. Inactive equipment shall be promptly removed from the poles. If City suspects that equipment on its pole is inactive, City may send written notice to Company. Upon receipt of written notice, Company has 45 days to remove the Inactive Equipment, or to notify the City in writing that it disputes in whole or in part the City's claim that the equipment is not or will not be utilized, which writing shall identify what equipment is in dispute and provide support for Company's claim that the equipment is not Inactive Equipment. If Company fails to respond or fails to remove undisputed Inactive Equipment, City may remove the Inactive Equipment at Company's expense. If there is a dispute, and the City wishes to require the company to remove the equipment, the City will notify Company that there is an active dispute, and the parties will utilize the dispute resolution process as set forth in Section 27 to determine whether the equipment is Inactive Equipment. The City's failure to require removal in any particular instance shall not be treated as an agreement that the equipment is active, or prevent the City from requiring removal at a later date. For purposes of this section "Inactive Equipment" is equipment that is not being used, except that in the case of fiber lines, the lines shall be treated as used if there are definite plans for their use, regardless of whether the lines are carrying traffic.

6. GUYS AND ANCHORS

- 6.1 Company, at its sole risk and expense, shall install and maintain guys and anchors as required where Company's anchorage requirements are not coincident with City's or the Overhead Facilities' existing anchorage requirements.
- 6.2 Where the anchorage requirements of Overhead Facilities used by Company and the City are coincident, the existing guys and anchors should be used. If City, in accordance with accepted electric utility standards, determines that separate guys and/or anchors are necessary, Company, at its sole risk and expense, shall install new guys and/or anchors. If City, based on such accepted electric utility standards, determines that the existing guys and/or anchors need to be replaced, solely to accommodate Company, City, at Company's sole expense, shall install new guys and/or anchors.

7. ADDITIONAL ATTACHMENTS

- 7.1 Company shall not have the right to place, nor shall it place, any additional Communications Equipment in contact with any Overhead Facilities, or modify the location or manner in which existing Communications Equipment contacts any Overhead Facilities, used by it without first making Request for and receiving written permission to do so from City as described above, subject to Section 8.
- 7.2 Company is not authorized to place any facilities other than Communications Equipment on City's poles, without first obtaining authorizations (including any necessary franchises) from City, nor may Company provide service using any facilities it places in the right-of-way without first obtaining authorizations from City, except that the foregoing does not apply to services where state law preempts any requirement for local authorization. Without limiting the foregoing, Company may not install Cable System or Open Video System facilities, or carry cable services over those facilities unless it has a state-wide franchise or other legal authority to do so.

8. INSTALLATION AND MAINTENANCE OF ATTACHMENTS

Company shall, at its own sole risk and expense, install and maintain Communications Equipment on Overhead Facilities in safe and good repair and in accordance with the requirements of the City and all city, state and federal laws, ordinances and regulations. No Request or permit from City's Electric Department is necessary for replacement of existing equipment with substantially similar equipment ("like for like") as the Parties agree that such replacement constitutes maintenance.

9. LOCATION OF ATTACHMENTS

Any pole space allotted to a Party for its use, any pole space allotted for clearance purposes, and any unallotted pole space may be occupied by a guy, lamp suspension or vertical contacts owned by either Party, so long as such occupancy does not conflict with the terms of this Agreement and provided that such guy, lamp suspension and vertical contacts are installed in such manner so as not to prevent or interfere with the full utilization by either Party, or preexisting third party, of the space allotted for such Party's use.

10. IDENTIFICATION OF COMMUNICATIONS EQUIPMENT

Company shall identify the Communications Equipment newly installed or serviced at each contact point by means of a marking method mutually agreed upon by the Parties. Such identification shall be recognizable from ground level so that City may readily determine that Company is the owner of the Communications Equipment. Company shall provide the City a 24-hour contact phone number to enable City to report any concerns regarding the Communications Equipment. In the event that City reports such concerns to Company, Company shall promptly respond to such call(s) and perform the

required repair or correct any adverse impact to City's operations caused by such Communications Equipment at no cost to City unless caused by City.

11. GUY ATTACHMENTS AND EASEMENTS

No charge, payment or fee of any nature whatsoever shall be collected or become due, by or to either of the Parties for the attachment of guy wires, provided that the proper easement(s) have been acquired. Vertical contacts to poles, stubs and anchors and the attachment of wires or wire supports to poles, to provide or maintain horizontal clearance from a pole of the other Party are excluded from charge, payment or fee of any nature.

12. RESERVATION OF RIGHTS

City reserves the right to operate and maintain Overhead Facilities to fulfill its service requirements to its electric utility ratepayers or communications customers. City shall not be liable to Company for any interruption to Company's service or for any interference with the operation of Company's equipment arising in any manner from the use of Overhead Facilities by City in accordance with this Agreement, provided that City shall give Company fifteen (15) days advance notice of any non-emergency work which affects Company's Communications Equipment.

13. SUBSEQUENT ATTACHMENTS

Should the City intend to authorize or permit attachments of a third party to a pole jointly used under this Agreement and should the proposed attachments of such third party require the rearrangement of any of the Communications Equipment, to the extent allowed under existing contracts and applicable law, City shall obligate such third party to agree to pay to Company the cost for Company to rearrange the Communications Equipment and any damage caused thereto before authorizing or permitting the attachments.

14. ATTACHMENT LIMITATIONS

14.1 Communications Equipment shall not be installed, placed, or maintained on Overhead Facilities carrying voltage of 60,000 volts or greater between conductors.

14.2 Should City find it necessary at any time to intentionally increase its voltage to 60,000 volts between conductors, on the poles jointly occupied under this Agreement, City shall give Company ninety (90) days prior written notice, as provided herein, of its intention to increase said voltages.

15. NO OWNERSHIP OR VESTED INTEREST CREATED

No use of any Overhead Facilities under this Agreement shall create or vest in Company any ownership interest, tenancy, estate or any other interest in the Overhead Facilities and

Company's rights therein shall be and remain a license. Each Party shall pay the cost of the installation and maintenance of its own facilities. Nothing in this Agreement shall be construed to compel City to maintain any Overhead Facilities for a period longer than demanded by its own service requirements.

16. DAMAGE TO EXISTING FACILITIES

If the facilities owned by either Party shall hereafter displace or pull any reasonably serviceable poles or anchors occupied hereunder out of line, or damage any Overhead Facilities or such facilities, equipment or installations owned by the other Party in any manner, the Party whose facilities caused such damage shall pay the cost of any replacements, repairs or restoration of said poles, anchors, facilities, equipment or installations.

17. USE OF EASEMENTS

For the term of this agreement, Company is authorized to use any easements and rights of way of City for access to Overhead Facilities to which Communications Equipment is attached pursuant to this Agreement so long as such use is not in conflict with City's present and future use, and City is able to authorize or suffer legitimately the same. Should a conflict with the City's use arise, City and/or Company shall provide the other party with written notice, and shall propose a reasonable alternative for the Communications Equipment. Company shall have ninety (90) days to respond to said notice and implement any alternatives.

18. REPLACEMENT OF POLES OR ANCHORS

18.1 In the event any Overhead Facilities occupied by Company under this Agreement are to be replaced, repaired or altered, Company shall, at its own sole risk and expense, (except in the case of rearrangements required by third parties, road relocation, or City owned commercial communications facilities), upon reasonable prior notice from City, relocate or replace its Communications Equipment or transfer it to replacement Overhead Facilities or perform any other work in connection with said equipment that may be required by City.

18.2 In cases of emergency, City may, at Company's sole expense, relocate, replace or renew the Communications Equipment, or transfer it to replacement Overhead Facilities or perform any other work required to serve the needs of City. City shall make commercially reasonable efforts to notify Company by telephone or email of the relocation of its Communications Equipment in the event of an emergency, prior to the relocation of that equipment, and, if not, City shall notify Company as soon as practicable thereafter. City generally charges time and a half for any necessary work after normal business hours.

19. NOTICE OF REMOVAL OR VACATION

Should Company remove its Communications Equipment from any of City's poles or anchors, Company shall, within thirty (30) days after such removal, give notice thereof to City, specifying the poles and anchors vacated and the location thereof, as well as the date of removal. Removal of all Communications Equipment from any Overhead Facilities without its replacement or substitution by Company within sixty (60) days shall constitute a termination of Company's right to use such Overhead Facilities without making new Request therefor.

20. POLE REMOVAL NOTICE

- 20.1 If City desires at any time to remove, replace, or relocate any pole, it shall (except in cases of emergency), give Company notice, in writing, to that effect at least thirty (30) days prior to the date on which it intends to remove such pole. If Company cannot accommodate the pole removal within the thirty (30) day notice period then the City may either (1) relocate Company's facilities and charge Company reasonable actual costs incurred by City, or (2) the Parties shall negotiate and mutually agree upon a longer timeframe for removal of the pole and Company's equipment, on a case by case basis. If such removal, relocation or replacement requires Company to relocate its Communications Equipment underground, City's Electric Department and Company shall work in good faith to negotiate a transition plan for removal from the pole, but if the Parties are unable to timely agree, the City may request that Company remove its facilities by a date certain. If by that date certain the facilities are not removed, then the facilities may be removed by the City. All reasonable costs to do so shall be borne by Company.
- 20.2 If City is required by law or ordinance to remove any pole or group of poles, or for good reason desires that any particular pole be removed without replacement, City shall so inform Company in writing at least ninety (90) days in advance or as otherwise required by law. If City informs Company of its desire to remove the pole, then Company shall remove the Communications Equipment from the pole before City's intended removal date. If such removal requires Company to relocate its Communications Equipment underground, City's Electric Department and Company shall work in good faith to negotiate a transition plan for removal, but if the Parties are unable to timely agree, the City may request that Company remove its facilities by a date certain. If by that date certain the facilities are not removed, then the facilities may be removed by the City. All reasonable costs to do so shall be borne by Company.
- 20.3 In the event of an emergency, City may remove such pole and shall in such case immediately notify Company of the action taken. City shall make commercially reasonable efforts to notify Company of the removal of its Communications Equipment, prior to the emergency removal of that equipment, and, if not, City shall notify Company as soon as practicable thereafter. If pole removal results in

loss of signal to Company's customers, City's Electric Department shall expedite any applicable approvals to ensure Company's customers' downtime is minimized, provided that this paragraph does not require City's Electric Department to treat Company any differently than any other entity attached to the poles.

21. DAMAGE TO OVERHEAD FACILITIES

Company shall exercise special precautions to avoid causing damage to Overhead Facilities and Company shall assume responsibility for any loss from such damage caused by Company. Company shall immediately notify the City via telephone and/or email of any such damage to Overhead Facilities and shall, within sixty (60) days from receipt of a written request for actual incurred damages, reimburse City for its Total Cost incurred in making repairs.

22. RIGHT TO INSPECT

City shall have the right to inspect each new installation of Communications Equipment attached to Overhead Facilities and to make periodic inspections at the City's discretion as conditions may warrant, provided that Company shall not pay for costs of inspection more than once every three years, and only for its share of costs apportioned among all attachers subject to the inspection. Such inspections shall not relieve Company of any responsibility, obligation or liability assumed under this Agreement.

23. COMPENSATION

23.1 As compensation for the right to install and maintain Communications Equipment on Overhead Facilities, Company shall pay to the City fees calculated as set forth in Exhibit A, attached hereto and incorporated herein by reference.

23.2 The amount of the fee due to City from Company for any year shall be based upon the type of attachments as defined in Exhibit "A" and occupied by Company on the first day of July of that year to the last day of June the following year. Said amount shall become due and payable on the last day of June of each calendar year. City shall provide an invoice at least thirty days prior to the due date, but an invoice shall not be a condition precedent to the payment due date. The payment dates provided for in this paragraph may be modified by the City upon written notice to Company. City may render an invoice for amounts due, but failure by the City to render an invoice does not relieve Company from its obligation to pay the fees due.

23.3 Company shall have the right, upon reasonable written notice and during normal business hours, to request copies of City records and accounts, from time to time, not more than once annually, to verify that the total annual costs payable under this Agreement do not exceed the reasonable cost to the City of services provided.

The production of such documents by City shall be subject to all limitations set forth in State and Federal laws.

- 23.4 An annual Baseline Report shall be provided to City by Company on June 30, 2009. The Baseline Report ("Report") sets forth the total number of pole attachments utilized by Company. City shall have the right to audit and verify the Report to assure the adequacy of the number of pole attachments stated. After the first year, the Company shall provide an updated Report setting forth the total number of pole attachments utilized by Company to the City on June 30 of each year. The annual Baseline Report shall indicate the type of equipment and number of attachments by equipment type.
- 23.5 If the Company does not agree upon the amount owed, then it shall pay the undisputed amount and shall make a claim as set forth in Section 27 below. Interest at the legal rate may be assessed on shall be awarded on that amounts unpaid but actually due.
- 23.6 Company shall pay for all rents owing for any period not covered by an active pole contact agreement, including but not limited to the period ending June 30, 2008, based on the rates under the former Agreement between the Parties. These payments shall be due and payable upon invoicing by City. Company shall have no rights to maintain its facilities on the poles under this Agreement, or to make any additional attachments, modifications or changes to its attachments, or exercise any rights it may have under this Agreement unless this payment is made upon invoicing. The failure to make this payment shall be treated as an abandonment by Company of its rights hereunder, and the City may without further notice, take any lawful action it deems appropriate with respect to the unauthorized attachments.
- 23.7 The Parties understand that Company contends that the fees charged herein would not be lawful if the City were subject to the same pole rate regulations as apply to other non-governmental pole owners. The Parties agree that should the rates for City pole attachments become subject to regulation, Company may notify City that it wishes to terminate this Agreement and obtain a contract at the regulated rates. It shall remain subject to these rates and the terms and conditions herein until a new agreement is executed, except as specifically required by applicable law or regulation.

24. MODIFICATIONS TO PAYMENTS

The annual pole attachment access payment rate and the initial installation charge shall be subject to review and adjustment in January of each year, based on the percentage of change in the U.S. Department of Labor Bureau of Labor Statistics Consumer Price Index, all items, 1982-1984=100, San Francisco-Oakland-San Jose, Consumer Price Index for all Urban Consumers ("CPI-U") compared to the October CPI-U for October,

1995. The amount of any annual adjustment in such payments shall not exceed ten (10%) of the rate in effect in the previous year.

25. INSURANCE

25.1 Company is either self insured for the following, or shall maintain in full force and effect the following insurance policies:

25.1.1 commercial general liability policy (bodily injury and property damage);

25.1.2 worker's compensation employer's liability policy; and

25.1.3 comprehensive automobile liability insurance policy.

25.2 Said coverages shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, the required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit B, attached hereto and incorporated herein by reference.

26. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Company agrees to protect, defend, hold harmless and indemnify City, its Directors, City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage arising from Company's negligent acts or omissions, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Company shall become legally liable arising from Company's acts, errors, or omissions with respect to or in any way connected with the prosecution of the work performed by Company pursuant to this Agreement.

27. DISPUTE RESOLUTION

27.1 Any controversies between Company and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be escalated to an officer or to executive management of each party for good faith resolution. Within fourteen (14) days of the written request of one party after the service of that request on the other party, such officers or managers of the parties shall meet (in person or by phone) to attempt to resolve any claims or disputes.

27.2 The escalation process under this section is a condition precedent to filing an action in any court, except for a claim for injunctive relief.

28. TERM AND TERMINATION

28.1. This Agreement shall become effective on the Effective Date and shall continue in effect until the occurrence of one of the following two events:

28.1.1. Upon receipt of a written notice by either Party from the other, at least one (1) year in advance of the intended termination date, informing the receiving Party of the sending Party's intention to terminate the Agreement;

28.1.2. Upon the end of ten (10) years from the Effective Date.

28.2 Upon receipt of a notice of termination as referred to above, this Agreement shall terminate at the date specified in such notice, which date shall not be less than one (1) year from the date of such notice. Company, at its own expense, shall remove the Communications Equipment from the Overhead Facilities within one hundred and eighty (180) days of said date of termination. City shall not terminate this Agreement for telecommunications anti-competitive reasons, however this provision does not waive City's right to remove Overhead Facilities in accordance with any other provisions of this Agreement.

29. NOTICE

All notices given or which may be given pursuant to this Agreement must be in writing and transmitted by United States certified mail or by nationally recognized courier service as follows:

To City at: Attn: Director of Electric Utility
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

and to Attaching Comcast of California II, LLC
Party at: Attn: Director, Government Affairs
1900 S. 10th Street
San Jose, CA 95112

Comcast Cable Communications, LLC
One Comcast Center
Philadelphia, PA 19103
Attn: General Counsel

Notice may also be provided to such other address as either Party may from time to time designate in writing, or to those in Exhibit C, attached and incorporated by reference. Notice may also be provided by email, but notice shall not be made exclusively by email.

30. NO FRANCHISE RIGHTS CREATED

Nothing in this Agreement shall be construed as granting or creating any franchise right.

31. ASSIGNMENTS

Company shall not assign this Agreement, or any portion of it, without the prior written permission of City which shall not be unreasonably withheld or delayed, and any such assignment made without such consent shall be void and shall not operate to relieve Company from any of its obligations or liabilities under this Agreement. Notwithstanding the foregoing and after written notice to City, Company may assign its rights and obligations under this Agreement to (a) an Affiliate; or (b) any successor entity in the event of such party's transfer of all or substantially all of its assets or stock, merger, spin-off, consolidation, reorganization or other business combination. Any permitted assignee or transferee shall be subject to all of the provisions of this Agreement.

32. AMENDMENTS

This Agreement may be amended from time to time. Any amendment shall be written and subscribed as herein. It is understood that all agreements with the City of Santa Clara are subject to approval of the City Council before City shall be bound thereby.

33. THIRD PARTY MODIFICATIONS

This Agreement shall be subject to such changes or modifications as may be required or authorized by any non-City affiliated third-party regulatory commission in the exercise of its lawful jurisdiction, provided that neither Party is hereby consenting to its contract rights being impaired, and any modification, revision, renewal or extension of this Agreement shall so state.

34. NO PUBLIC OFFERING

To the extent Company is required to file this Agreement with the Public Utilities Commission, Company declares that said filing, pursuant to the procedural requirements of General Order No. 95-A is not to be construed as a public offering by Company of the services or the Communications Equipment.

35. SERVICE WARRANTY

Company hereby warrants that it has acquired, and maintains during the term of this Agreement, all necessary authorization required to provide services set forth in this Agreement within the City. If the nature and character of Company's Communications Equipment changes in the future, Company shall notify City, in writing, at least thirty (30) days in advance of its intent to change the nature of its Communications Equipment. The Parties agree that the terms of this Agreement are based on the nature of equipment

attached to the Overhead Facilities. Company acknowledges that any unauthorized change in the nature of Communications Equipment, beyond the definition of Communications Equipment specified in this Agreement, shall require the renegotiation of the terms and conditions of this Agreement.

36. DEFAULT AND REMOVAL OF COMMUNICATIONS EQUIPMENT

36.1 If Company should default in the performance of any work which it is obligated to do under this Agreement, except the work of removing its equipment from any pole within the time allowed for such work, City may elect to do such work at Company's sole expense upon fourteen (14) days prior written notice to Company and Company on demand shall reimburse City for the commercially reasonable Total Cost incurred.

36.2 If Company should default in the removal of its Communications Equipment or property from any of the Overhead Facilities within the time allowed for such removal, City shall give written notice to Company that City will remove and store the Communications Equipment or property at Company's sole expense in which event Company shall reimburse City on demand for all reasonable storage and/or disposal expenses thereby incurred. Company will be provided one hundred eighty (180) days written notice prior to any self-help efforts by City, and at the end of that time period, if Company does not claim said equipment, that equipment shall become the sole property of City in which event title to said equipment and property shall vest in City. In no event shall City be liable for any storage and/or disposal fees associated with such equipment; all such fees shall be borne by Company.

36.3 Nothing herein contained shall be construed to make the City or any Third Parties liable for damage to equipment or service of Company.

37. DEFAULT PROCEDURES

If Company defaults in any of the following particulars:

37.1 Fails to pay the fees prescribed in paragraph 23 hereof with reasonable promptness as the same shall become due; or

37.2 Breaches any other term or condition of this Agreement;

then City shall give Company written notice, either by mail or personal service, setting forth the nature of the default and a demand that said default be cured and remedied. If Company fails, neglects or refuses within sixty (60) days after the giving of said notice to cure or remedy the default, or commence and diligently continue such cure, then City, upon notice and without suit or other proceedings, may terminate this Agreement and cancel and annul the rights and privileges granted herein.

38. NONEXCLUSIVE LICENSE

The license and right to access the Overhead Facilities granted by this Agreement is non-exclusive.

39. WAIVER AND REMEDIES

Failure of either Party to enforce any provision of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect. The remedies expressly provided in this Agreement shall be in addition to any other remedies available at law or in equity.

40. USE SUBJECT TO PRIOR RIGHTS AND OBLIGATIONS

Nothing in this Agreement shall be construed as affecting any rights or privileges previously conferred by City or any other owner of an interest in or of facilities on the Overhead Facilities, by contract or otherwise, upon others to use the Overhead Facilities covered by this Agreement; and City and each other such owner shall have the right to continue and extend such rights or privileges consistent with this Agreement. The privileges herein granted to Company shall at all times be subject to any such existing contracts and arrangements. Any rights and privileges herein conferred are also subject and subordinate to the prior right of City to use all its easements rights of way and property interests and governmental powers in the performance of its duties as a municipal utility and a governmental entity.

(continued on Page 16 of 16)

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41. **SURVIVAL**

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing expressly made a part of this Agreement and related to those terms, will survive the termination of this agreement. In the event there is no new Agreement in place at termination of this Agreement, the parties agree to operate under this existing Agreement for a period of ninety (90) days, all terms remaining in effect.

The Parties acknowledge and accept the terms, conditions and obligations of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

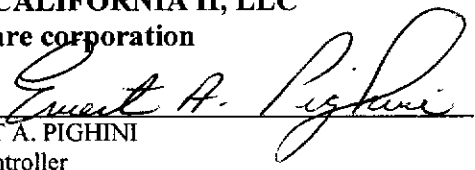
ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

**COMCAST OF CALIFORNIA II, LLC
A Delaware corporation**

By: 
ERNEST A. PIGHINI
Title: SVP/Controller
Address: One Comcast Center
Philadelphia, PA 19103
Telephone: (215) 286-7718
Facsimile:

"Company"

**POLE CONTACT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
COMCAST**

EXHIBIT A

Schedule of Fees and Charges

I. Contact Implementation Charges

Company shall reimburse the City for its actual costs for preparing the Overhead Facilities for each new or modified Company Agreement. This reimbursement is a one-time charge for each Agreement. Charges are due upon approval to install or modify any contact and must be paid before construction begins.

Charge: Cable Attachment Charges

Description: The costs incurred by the City for making space available and other modifications necessary to accommodate each line attachment.

Price: Total Cost

Charge: Anchor Attachment Charges

Description: The costs incurred by the City for making provisions for guying the structure at the communications level.

Price: Total Cost

Charge: Equipment Mounting Charges

Description: The costs incurred by the City for making space available and other modifications necessary to accommodate equipment (amplifiers, nodes, battery backup) mounting.

Price: Total Cost

Charge: Engineering Charge

Description: The costs incurred by the City for reviewing contact design, designing City modifications and updating operation records.

Price: Total Cost

II. Annual Contact Fees

Company shall pay the City fees for contacting the Overhead Facilities. The Fees will be paid annually and will be adjusted each year in accordance with the consumer price index set forth in this Agreement. The applicable fee will be charged each time a cable attachment or other piece of equipment contacts a pole

or anchor. The City agrees that in no event shall the applicable fee exceed the pole attachment fee charged to any other commercial user attaching like facilities in the poles' communications space by agreement with the City entered into or renewed after the date of this Agreement.

Fee: **Cable Attachment Fee**

Description: The annual fee to be paid by Company for each point on the pole to which cable is attached. Communications Equipment not requiring an additional cable attachment point and required safety attachments, such as guard arms shall not invoke an additional pole attachment fee but, shall require the standard Request and engineering review prior to being attached to the Overhead Facilities.

Base Year: 2008

Price: \$15.71 per cable attachment per year.

Fee: **Anchor Attachment Fee**

Description: The annual fee to be paid by Company for each City anchor used by Company.

Base Year: 2008

Price: \$2.86 per anchor attachment per year

Fee: **Equipment Mounting Fee**

Description: The annual fee to be paid by Company for the pole space used by Company to mount equipment (amplifiers, nodes, battery backup).

Base Year: 2008

Price: \$85.69 per equipment installation per year

Fee: **Riser Contact Fee**

Description: The annual fee to be paid by Company for the pole space used by Company to mount each riser.

Base Year: 2008

Price: \$28.56 per riser per year

Price Calculations for 2008:

Attachment	2007 Fees	Oct-95 CPI	Oct-06 CPI	2008 Fees	Rate of Escalation
Cable Attachment	\$15.21	152.6	217.949	\$15.71	3.29%
Anchor Attachment	\$2.77	152.6	217.949	\$2.86	3.29%
Equipment Mounting	\$82.96	152.6	217.949	\$85.69	3.29%
Riser Contact	\$27.65	152.6	217.949	\$28.56	3.29%

Note: In accordance with Section 24. ("Modifications to Payments"). CPI Source: Department of Labor Statistics(<http://stats.bls.gov>); CPI for SF/SJ Bay Area. Source for Oct. 2007 CPI (SF/SJ Bay Area): http://data.bls.gov/servlet/SurveyOutputServlet?series_id=CUURA422SA0,CUUSA422SA0

**POLE CONTACT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
COMCAST**

**CITY OF SANTA CLARA, CALIFORNIA
STANDARD INSURANCE REQUIREMENTS**

EXHIBIT "B"

Without limiting the Company's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Company shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Company; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Company to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million

dollars (\$1,000,000) each accident using. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Company included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Company or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Company's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Company shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Company's insurance.
3. General Aggregate. The general aggregate limits shall apply to Company's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL).
4. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-

payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Company and City agree as follows:

1. Company agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Company, provide the same minimum insurance coverage required of Company, except as with respect to limits. Company agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Company agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Company agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Company for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Company in the event of material noncompliance with the insurance requirements set forth in this Agreement, upon thirty (30) days notice to Company.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Company, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained

G. EVIDENCE OF COMPLIANCE

City of Santa Clara Electric Department
c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951) 766-2280; or
Fax: (951) 766-2299

Page 4 of 4

**POLE CONTACT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
COMCAST**

EXHIBIT "C"

Personnel Contact Form

For City of Santa Clara:

Contact during normal business hours:

Director of Electric Utility
Electric Department
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 261-5292
Facsimile: (408) 249-0217

Contact for emergencies (24x7x365) and after normal business hours:

Operator on Duty
Operations Control Room
Telephone: (408) 615-5640
Facsimile: (408) 986-8406

For Comcast

Primary Contact:

Name: Steve Morioka
Title: Construction Supervisor
Comcast
Address: 1900 – 10th Street, San Jose, CA 95112
Telephone: (408) 918-3245
Cell: (408) 426-7781 [24/7 weekends and after 3pm]

Secondary Contact:

Name: Doug Nolan
Construction Manager
Comcast
Address: 1900 – 10th Street, San Jose, CA 95112
Telephone: (408) 918-6039

Emergency Service:

After normal business hours and weekends: Comcast California Local Management Center (24 hour facility) – 1-888-824-8219

CITY OF SANTA CLARA
AGENDA MATERIAL ROUTE SHEET

Council Date: January 27, 2009

SUBJECT: Approval of Pole Contact Agreement with Comcast of California II, LLC

CERTIFICATION

The proposed Pole Contact Agreement

Regarding: Comcast of California II, LLC

has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published ____ time(s) at least ____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 2008.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title _____ U.S.C. § _____
(Titles run 1 through 50)

California Codes:

Code _____ § _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

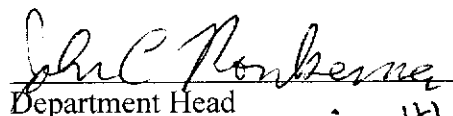
Title _____ C.F.R. § _____
(Titles run 1 through 50)

California Regulations:

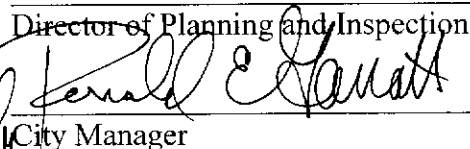
Title _____ California Code of Regulations § _____
(Titles run 1 through 28)

City
City Charter § _____ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)
City Code § _____

1. As to City Functions, by
2. As to Legality, by
3. As to Environmental
Impact Requirements, by
4. As to Substance, by


Department Head


City Attorney's Office/CAO Assignment No. 08.0061

Director of Planning and Inspection

City Manager

Revision Date: June 7, 2005